

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILTON REASSURANCE LIFE COMPANY
OF NEW YORK,

Plaintiff,

-v-

WALTER F. GARBRECHT, JR. , *et al.*,

Defendants.

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DATE FILED: 12/3/2014

No. 13-cv-5536 (RJS) (HBP)
ORDER ADOPTING REPORT AND
RECOMMENDATION

RICHARD J. SULLIVAN, District Judge:

On August 8, 2013, Wilton Reassurance Life Company of New York (“Wilton”) brought this interpleader action to resolve competing claims to the proceeds of the life insurance policy of Donna A. Garbrecht (the “Insured”). (Doc. No. 1.) On October 16, 2013, Defendants Walter F. Garbrecht, Jr., minor D.G., and Joshua Rodriguez (collectively, the “Moving Defendants”) answered and filed a cross-claim against the other named Defendants, seeking disbursement of the proceeds of the Insured’s policy to the Moving Defendants and Defendant Renee Maisano-Cuzzo in accordance with a change-of-beneficiary request processed by Wilton on January 21, 2009 (the “Last Accepted Change Request”). (Doc. No. 10.) By Order dated December 20, 2013, this matter was referred to the Honorable Henry B. Pitman, Magistrate Judge. (Doc. No. 20.) On June 20, 2014, the Moving Defendants filed a motion seeking an entry of default and default judgment against Defendants Joyce R. Maisano and Suzanne Schmidt, as well as summary judgment against Defendant Gail Dardano as to the Moving Defendant’s cross-claim.

(Doc. Nos. 25–30.) On July 2, 2014, Wilton filed a motion for attorney’s fees and costs, which remains pending. (Doc. No. 31.)

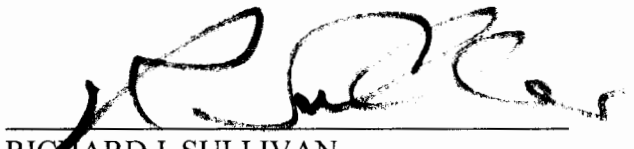
On November 12, 2014, Magistrate Judge Pitman issued a “Report and Recommendation” (“Report” or “Rep.”) concerning the Moving Defendants’ motion, recommending that the Court grant the motion and direct the Clerk of the Court to pay all but \$15,000 of the balance of the interest-bearing account “representing the benefits due under the policy and interest earned that Wilton deposited in the Court’s registry, to the beneficiaries named in the Last Accepted Change Request” and maintain that amount until Wilton’s pending motion for fees and costs is resolved. (Doc. No. 32 at 29.) In the Report, Magistrate Judge Pitman advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. (Doc. No. 32 at 28–29); *see* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). No party has filed objections to the Report, and the time to do so has expired. *Cf. Frank v. Johnson*, 968 F.2d 298 (2d Cir. 1993).

When no objections to a report and recommendation are made, the Court may adopt the report if there is no clear error on the face of the record. *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000). After reviewing the record, the Court finds that Magistrate Judge Pitman’s well-reasoned and careful Report is not facially erroneous. Accordingly, the Court adopts the Report in its entirety and, for the reasons set forth therein, (1) respectfully directs the Clerk of the Court to enter the defaults of Defendants Joyce R. Maisano and Suzanne Schmidt; (2) grants the Moving Defendants’ motion for default judgment against Defendants Joyce R. Maisano and Suzanne Schmidt; (3) grants the Moving Defendants’ motion for summary judgment against Defendant

Gail Dardano as to the Moving Defendants' claims to the proceeds of the policy; (4) respectfully directs the Clerk of the Court to pay all but \$15,000 of the balance of the interest bearing account to the beneficiaries as set forth in the Report; and (5) respectfully directs the Clerk of the Court to maintain the remaining \$15,000 in the Court's Registry until Wilton's motion for fees and costs is resolved. The Clerk of Court is respectfully directed to terminate the motion located at Doc. No. 25.

SO ORDERED.

Dated: December 3, 2014
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE